UNOFFICIAL COPY

CONSTRUCTION MANAGER AGREEMENT

AGREEMENT made this 31st day of March, 1985 between **RUSH-PRESBYTERIAN-ST. LUKE'S MEDICAL CENTER**, an Illinois not-for-profit corporation, (hereinafter referred to as the "Owner") and **GILBANE BUILDING COMPANY**, a Rhode Island corporation, duly licensed and registered to do business in the State of Illinois, with its principal office located at 332 South Michigan Avenue, Chicago, Illinois, 60604, (hereinafter referred to as the "Construction Manager") for services in connection with the following described project:

Triangle Office Complex - consisting of a one-story building (approximately 34,000 square feet) and a five-story building with basement (approximately 164,000 square feet); located north of the Eisenhower Expressway Interstate 290 on a site bounded by Van Buren Street on the South, Paulina Street on the East, Ogden Avenue on the West and Jackson Street on the North. The legal descriptions of the parcels comprising the site are listed on Exhibit "A" attached hereto and by this reference made a part hereof. The Architect for the Project is Hansen, Lind, Meyer, Suite 700, 350 North Clark Street, Chicago, Illinois 60610. The Engineer for the Project is Jaros, Baum and Bolles, 233 South Wacker Drive, Chicago, Illinois 60606. The Owner and the Construction Manager agree as set forth below:

Property of Cook County Clerk's Office

86053638

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

86053638

CONSTRUCTION MANAGER AGREEMENT

BETWEEN

RUSH-PRESBYTERIAN-ST. LUKE'S MEDICAL CENTER

AND

GILBANE BUILDING COMPANY

Property of Cook County Clerk's Office

86053638

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

CONSTRUCTION MANAGER AGREEMENT

TABLE OF CONTENTS

Property of Cook County Clerk's Office

86053638

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

8 6 0 5 3 6 3 8

Property of Cook County Clerk's Office

86053638

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

Property of Cook County Clerk's Office

86053638

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

ARTICLE 1

THE CONSTRUCTION TEAM AND EXTENT OF AGREEMENT

1.1. **Definitions.**

1.1.1 **The Contract Documents.** The Contract Documents consist of this Owner-Construction Manager Agreement, the Conditions of the Contract (General, Supplementary and other Conditions), the Drawings, the Specifications, and all Addenda issued prior to and all Modifications issued after execution of the Contract. A Modification is (1) a written amendment to the Contract signed by both parties, (2) a Change Order, and (3) a written order for a minor change in the Work issued by the Architect pursuant to Paragraph 9.2.1. The Contract Documents do not include Bidding Documents such as the Advertisement or Invitation to Bid, the Instructions to Bidders, sample forms, the Construction Manager's Bid or portions of Addenda relating to any of these, or any other documents, unless specifically enumerated in the Owner-Construction Manager Agreement.

1.1.2. **The Contract.** The Contract Documents form the Contract for construction. This Contract represents the entire and integrated agreement between the parties hereto and supersedes all prior negotiations, representations, or agreements, either written or oral. The Contract may be amended or modified only by

Property of Cook County Clerk's Office

86053638

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

a Modification as defined in Paragraph 1.1.1. When Drawings and Specifications are complete, they shall be identified by amendment to this Agreement. This Agreement shall not be superseded by any provisions of the documents for construction and may be amended only by Written instrument signed by both the Owner and Construction Manager. The Contract Documents shall not be construed to create any contractual relationship of any kind between the Architect and the Construction Manager, but the Architect shall be entitled to performance of obligations intended for his benefit, and to enforcement thereof, and the Construction Manager shall be entitled to performance of obligations intended for his benefit, and to enforcement thereof. Nothing contained in the Contract Documents shall create any contractual relationship between the Owner or the Architect and any Trade Contractor or Trade Subcontractor.

1.1.3. **The Work**. The Work is that part of the construction that the Contruction Manager is to perform with his own forces or that part of the construction that a particular Trade Contractor is to perform and includes all labor necessary to produce such construction, and all materials and equipment incorporated or to be incorporated in such construction.

1.1.4. **The Project**. The Project is the total construction of which the Work performed under the Contract Documents may be the whole or a part.

Property of Cook County Clerk's Office

86053638

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

1.1.5. **Day**. The term day shall mean calendar day unless otherwise specifically designated.

1.1.6. **Substantial Completion**. The term Substantial Completion shall be defined according to the definition given in the General Conditions, Section 1.1.20, as amended.

1.1.7. **Final Completion**. The term Final Completion shall be defined as occurring when all of the Work fulfills all of the terms of the Contract Documents in all respects, there are no unfinished items upon which Owner requests corrective action, and the Construction Manager's and all Trade Contractors' and subcontractors' personnel and equipment are withdrawn from the site.

1.2. **Additional Construction Manager's Duties to Owner**.

1.2.1 In addition to the duties and responsibilities set forth herein, the Construction Manager shall have the same duties and responsibilities to the Owner which are set forth in the General and Supplementary Conditions as being owed by the Trade Contractors or Trade Subcontractors to the Construction Manager. If there is any conflict between the duties and responsibilities owed by the Construction Manager under this Agreement and those set forth in the General and Supplementary Conditions, the higher or more expansive duty or responsibility

Property of Cook County Clerk's Office

86053638

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

shall be applicable. The Owner's duties to the Construction Manager shall be defined only by this Agreement and the General and Supplementary Conditions without reference to the duties or responsibilities owed by the Construction Manager to the Trade Contractor or Trade Subcontractor. Any duty or responsibility of the Construction Manager to the Owner shall not be limited or abrogated because the Architect or any Owner's consultant has a similar duty or responsibility to the Owner.

1.2.2. **Access to Records.** Construction Manager will maintain and make available for inspection by Owner its accounting records for the work it performs through its own forces, for the work performed by Trade Contractors and for services rendered as Construction Manager. These records shall include those documents ordinarily maintained by Construction Manager for projects of this size and scope in which it acts as a Construction Manager. In any event, however, Construction Manager shall retain and organize all documents pertaining to expenses incurred by it or by Trade Contractors, Subtrade Contractors, or their suppliers which are reimbursable by Owner under this Agreement pursuant to Article 8. Construction Manager shall also maintain its documents pertaining to nonpersonnel expenses incurred in its services as Construction Manager. These records shall be maintained and remain available to the Owner for three years after Substantial Completion of the Project.

Property of Cook County Clerk's Office

86053638

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

1.3. **Best Efforts.** The Construction Manager accepts the relationship of trust and confidence established between him and the Owner by this Agreement. He covenants with the Owner to furnish his best skill and judgment and to cooperate with the Architect and Engineer in furthering the interests of the Owner. He agrees to furnish efficient business administration and superintendence and to use his best efforts to complete the Project in an expeditious and economical manner consistent with the interest of the Owner.

1.4. **The Construction Team.** The Construction Manager, the Owner, the Architect and the Engineer, called the "Construction Team", shall work from the date hereof through construction completion. The Construction Manager shall provide leadership to the Construction team on all matters relating to construction.

1.5. **Construction Manager Representatives.** Construction Manager shall designate two of its employees to work full time on the Project for the duration of this Agreement. Each individual so named shall work full-time on the Project unless his/her employment relationship with the Construction Manager is terminated. Construction Manager may change the designation of its representative or representatives upon thirty (30) days written notice to the Owner. Owner shall designate one of its employees as the principal person to contact regarding the

Property of Cook County Clerk's Office

86053638

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

Project. Owner may change the designation of its representative upon thirty (30) days' notice to the Construction Manager.

1.6. **Time Is Of The Essence.** The parties understand and agree that time is of the essence of this Agreement.

Property of Cook County Clerk's Office

ARTICLE 2

CONSTRUCTION MANAGER'S SERVICES

The Construction Manager will perform the following services under this Agreement in each of the phases or periods described below.

2.1 **Pre-Construction Phase.** The Pre-construction phase will commence as of April 23, 1984 and will end when Construction is commenced.

2.1.1 **Initial Project Budget.** The Construction Manager shall, in consultation with and subject to the approval of the Owner, develop an estimate of the Cost of the Work from which the "Initial Project Budget" shall be prepared. The Construction Manager shall take into account the value engineering, life cycle costing, inflation and other factors when preparing the Initial Project Budget.

86053638

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

The Initial Project Budget shall categorize the Work in detail by bid package or trades in such a way that as detailed cost estimates, negotiated trade contracts or bids are developed and/or received, they can be compared against the estimates in the Initial Project Budget and if significant variations appear immediate corrective action may be taken. If the Initial Project Budget exceeds the Owner's budget, the Owner may request the Architect to revise the plans and specifications or may terminate this Agreement pursuant to Section 12.4.

2.1.2 **Project Timing.** Develop a Project Time Schedule that coordinates and integrates the Architect's and Engineer's design efforts with construction schedules. A Project Construction Schedule incorporating a detailed schedule for the construction operations of the Project, including realistic activity sequences and durations, allocation of labor and materials, processing of shop drawings and samples, and delivery of products requiring long lead time procurement shall be prepared prior to the Commencement of Work and agreed to, in writing, by the Owner and Construction Manager. The Owner's occupancy requirements showing portions of the Project having occupancy priority shall also be noted on the Schedule. Subject to authorized adjustments, Substantial Completion shall be achieved not later than the time set forth in the Project Construction Schedule.

2.1.3 **Project Planning.** Schedule and attend regular meetings with the Architect and Engineer during the development of

Property of Cook County Clerk's Office

86053638

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

conceptual and preliminary design to advise on site use and improvements, selection of materials, building systems and equipment. Provide recommendations on construction feasibility, availability of materials and labor, time requirements for installation and construction, and factors related to cost including costs of alternative designs or materials, preliminary budgets, and possible economies.

2.1.3.1 **Coordination of Contract Documents.** Review the Drawings and Specifications as they are being prepared, recommending alternative solutions whenever design details affect construction feasibility or schedules without, however, assuming any of the Architect's or Engineer's responsibilities for design.

2.1.3.2. **Architect and Engineer.** Make recommendations to the Owner and the Architect and Engineer regarding the division of Work in the Drawings and Specifications to facilitate the bidding and awarding of Trade Contracts, allowing for phased construction taking into consideration such factors as time of performance, availability of labor, overlapping trade jurisdictions, and provisions for temporary facilities.

2.1.3.3 **Construction Planning.** Recommend for purchase and expedite the procurement of long-lead items to ensure their delivery by the required dates.

Property of Cook County Clerk's Office

86053638

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

2.1.3.4 **Review of Drawings**. Review the Drawings and Specifications with the Architect and Engineer to eliminate areas of conflict and overlapping in the Work to be performed by the various Trade Contractors and prepare prequalification criteria for bidders.

2.1.3.5 **Trade Contractor Bids and Awards**. Develop bidders lists and bid packaging, conduct pre-bid conferences as necessary. Develop Trade Contractor interest in the Project and as working Drawings and Specifications are completed, take competitive bids on the Work of the various Trade Contractors. After analyzing the bids, recommend to the Owner contracts to be awarded. The Owner maintains the right to review and approve any and all bids. Owner's approval shall not be unreasonably withheld. In the event that Owner's rejection of a bidder or bidders recommended by the Construction Manager results in an increase in the Construction Manager's cost of a Trade Contract or Trade Contracts, the Guaranteed Maximum Cost shall be increased by the amount of such excess.

2.1.3.6 **Non-Discrimination and Equal Employment Opportunity**. Determine applicable requirements for equal employment opportunity programs for inclusion in Project bidding documents. Attention is called to Federal Executive Order 11246 as modified by Executive Order 11375; Illinois Revised Statutes (1983) Chapter 29, Sections 17 to 24 inclusive; and Chapter 68,

Property of Cook County Clerk's Office

86053638

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

Section 2-105. The Construction Manager agrees that it shall take affirmative action to ensure that it shall not commit any unfair employment practice. The Construction Manager also agrees that it will provide in any contract that it enters into related to the Project that all trade contractors, subcontractors, or sub-subcontractors, all labor organizations and others that perform any labor, materials or services to the Project, shall take affirmative action to ensure that no unfair employment practice is committed. Where applicable, the contractor will comply with the above Federal Executive Order and the Illinois Revised Statutes. In addition to the above noted covenants, Owner has established and hereby makes Construction Manager aware of a goal that at least twenty percent (20%) of the hard construction cost budget with respect to the Project will be allocated to contracts or agreements with minority business enterprises or allocated to minority hiring activity. Construction Manager hereby agrees at the Owner's request to periodically report to the Owner concerning the Construction Manager's progress in implementing such above noted goal. Said report shall include all steps taken to insure compliance with said goal. Failure to comply with these provisions will subject the Construction Manager to the indemnity provisions of this Agreement, Section 11.1 herein.

Property of Cook County Clerk's Office

86053638

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

2.2 **Construction Phase**. The Construction Phase will begin with the commencement of construction and will end upon Final Completion of the Project as defined in Paragraph 1.1.7, or termination of the Project, as defined in Article 12.

2.2.1 **Project Control**. Monitor the Work of the Trade Contractors and coordinate the Work with the activities and responsibilities of the Owner, Architect and Engineer and Construction Manager to complete the Project in accordance with the Owner's objectives of cost, time and quality.

2.2.2 **Staff**. Maintain a competent full-time staff at the Project site to coordinate and provide general direction of the Work and progress of the Trade Contractors on the Project.

2.2.3 **Organization**. Establish an on-site organization and lines of authority in order to carry out the overall plans of the Construction Team.

2.2.4 **Coordination**. Establish procedures for coordination among the Owner, Architect and Engineer, Trade Contractors and Construction Manager with respect to all aspects of the Project and implement such procedures.

2.2.5 **Progress Meetings**. Schedule and conduct progress meetings at which Trade Contractors, Owner, Architect and

Property of Cook County Clerk's Office

86053638

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

Engineer and Construction Manager can discuss jointly such matters as procedures, progress, problems and scheduling.

2.2.6 **Monitoring of the Schedule.** Provide regular monitoring of the schedule as construction progresses. Identify potential variances between scheduled and probable completion dates. Review schedule for Work not started or incomplete and recommend to the Owner and Trade Contractors adjustments in the schedule to meet the probable completion date. Provide summary reports of each monitoring and document all changes in schedule.

2.2.7 **Trade Contractor Capabilities** Determine the adequacy of the Trade Contractors' personnel and equipment and the availability of materials and supplies to meet the schedule. Recommend courses of action to the Owner when requirements of a Trade Contract are not being met.

2.2.8 **Physical Construction.** Provide all supervision, labor, materials, construction equipment, winter protection, tools and subcontract items which are necessary for the completion of the Project which are not provided by either the Trade Contractors or the Owner. To the extent that the Construction Manager performs any Work with his own forces, he shall, with respect to such Work, perform in accordance with the Plans and Specifications and in accordance with the procedure applicable to the Project.

Property of Cook County Clerk's Office

86053638

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

2.2.9 **Cost Accounting Records.** Maintain cost accounting records on authorized Work performed under unit costs, actual costs for labor and material, or other bases requiring accounting records. Afford the Owner access to these records and preserve them for a period of three (3) years after final payment.

2.2.10 **Change Orders.** Develop and implement a system for the preparation, review and processing of Change Orders. Recommend necessary or desirable changes to the Owner, the Architect and Engineer, review requests for changes, submit recommendations to the Owner, the Architect and Engineer, and assist in negotiating Change Orders.

2.2.11 **Payments to Trade Contractors.** In conjunction with Owner, develop and implement a procedure for the review, processing and payment of applications by Trade Contractors for progress and final payments. Payments to Trade Contractors shall be in accordance with Section 4.5 and Section 4.6 hereof.

2.2.12 **Permits and Fees.** Assist the Owner and Architect and Engineer in obtaining all building permits and special permits for permanent improvements, excluding permits for inspection or temporary facilities required to be obtained directly by the various Trade Contractors. Assist in obtaining approvals from all the authorities having jurisdiction.

Property of Cook County Clerk's Office

86053633

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

2.2.13 **Owner's Consultants**. If required, assist the Owner in selecting and retaining professional services of a surveyor, testing laboratories and special consultants, and coordinate these services, without assuming any responsibility or liability of or for these consultants.

2.2.14 **Inspection**. Inspect the Work of Trade Contractors for defects and deficiencies in the Work without assuming any of the Architect's and Engineer's responsibilities for inspection.

2.2.15 **Safety**. Review the safety programs of each of the Trade Contractors and make appropriate recommendations. In making such recommendations and carrying out such reviews, he shall not be required to make exhaustive or continuous inspections to check safety precautions and programs in connection with the Project. The performance of such services by the Construction Manager shall not relieve the Trade Contractors of their responsibilities for the safety of persons and property, and for compliance with all federal, state and local statutes, rules, regulations and orders applicable to the conduct of the Work.

2.2.16 **Document Interpretation**. Refer all questions for interpretation of the documents prepared by the Architect and Engineer to the Architect and Engineer.

Property of Cook County Clerk's Office

86053638

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

2.2.17 **Shop Drawings and Samples.** In collaboration with the Architect and Engineer, establish and implement procedures for expediting the processing and approval of shop drawings and samples.

2.2.18 **Reports and Project Site Documents.** Record the progress of the Project. Submit written progress reports to the Owner and the Architect and Engineer including information on the Trade Contractors' Work, and the percentage of completion. Keep a daily log available to the Owner and the Architect and Engineer.

2.2.19 **Records.** Maintain at the Project site, on a current basis: records of all necessary Contracts, Drawings, blueprints, photographs, samples, purchases, materials, equipment, maintenance and operating manuals and instructions, and other construction related documents, including all revisions. Obtain data from Trade Contractors and maintain a current set of record Drawings, Specifications and operating manuals. At the completion of the Project, deliver all such records to the Owner.

2.3 **Finalization Period**

2.3.1 **Start-Up.** With the Owner's maintenance personnel, direct the checkout of utilities, operations systems and equipment for readiness and assist in their initial start-up and testing by the Trade Contractors.

Property of Cook County Clerk's Office

86053638

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

2.3.2 **Final Completion.** Provide written notice to the Owner and Architect and Engineer that the Work is ready for final inspection. Perform such work as is necessary to bring the Project to Final Completion. Assist Owner in obtaining the Certificate of Completion from the City of Chicago called for by the Contract For The Sale of Land and Redevelopment between the City of Chicago and the Owner dated November 14, 1984, hereinafter referred to as "the Redevelopment Agreement". A copy of the Redevelopment Agreement is attached hereto as Exhibit "B." The issuance by the City of Chicago of a Certificate of Completion as called for in the Redevelopment Agreement shall have no bearing upon the determinations to be made under the Contract Documents of Substantial Completion or Final Completion. Secure and transmit to the Architect and Engineer required guarantees, affidavits, releases, bonds and waivers. Turn over to the Owner all keys, manuals, records, drawings and maintenance stocks.

2.3.3 **Warranty.** Where any Work is performed by the Construction Manager's own forces or by Trade Contractors under contract with the Construction Manager, the Construction Manager shall warrant that all materials and equipment included in such Work will be new, unless otherwise specified to and approved by Owner, and that such Work will be of good quality, free from improper workmanship and defective materials and in conformance

Property of Cook County Clerk's Office

86053638

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

with the Drawings and Specifications. With respect to the same Work, the Construction Manager further agrees to correct all Work defective in material and workmanship for a period of one year from the Date of Substantial Completion or for such longer periods of time as may be set forth with respect to specific warranties contained in the trade sections of the Specifications. Occupancy or use of the Work shall not be construed as commencing the guarantee period at any earlier date. However, Owner and Construction Manager may designate a portion of the Work as substantially complete. As to that portion of the Work so designated, the guarantee period shall commence as of the date of such designation. The expiration of any guarantee or correction of Work period shall not relieve the Construction Manager of its liability for latent defects in the Work or deficiencies which are not readily ascertained, including but not limited to defective materials and workmanship, defects attributable to substitutions for specified materials, substandard performance or any of the Work otherwise not in compliance with the Contract Documents. Such latent defects or deficiencies shall be corrected and guaranteed for a period of one year. The Construction Manager shall collect and deliver to the Owner any specific written warranties given by others. The establishment of the time period of one year after the Date of Substantial Completion or such longer period of time as may be prescribed by law or by the terms of any warranty required by the Contract Documents relates only to the specific obligation of the

Property of Cook County Clerk's Office

86053638

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

Construction Manager to correct the Work, and has no relationship to the time within which his obligation to comply with the Contract Documents may be sought to be enforced nor to the time within which proceedings may be commenced to establish the Construction Manager's liability with respect to his obligations other than specifically to correct the work. The Construction Manager shall and does hereby assign to the Owner the benefits of any warranties of all Trade Contractors, Trade Subcontractors, materialmen and suppliers. Such assignment shall not relieve the Construction Manager of its warranty obligations to the Owner under this Agreement.

Property of Cook County Clerk's Office

ARTICLE 3

OWNER'S RESPONSIBILITIES

3.1 **Full Information.** The Owner shall provide full information regarding his requirements for the Project.

3.2 **Owner's Representative.** The Owner shall designate a representative who shall be fully acquainted with the Project and has authority to issue and approve Project Construction Budgets, issue Change Orders, render decisions promptly and furnish information expeditiously.

86053638

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

3.3 **Architect and Engineer.** Owner shall retain an Architect and Engineer to design and to prepare construction documents for the Project. The Architect's and Engineer's services,duties and responsibilities are described in the Agreement between the Owner and the Architect and Engineer. A copy of the Owner's Agreement with the Architect and a copy of the Owner's Agreement with the Engineer will be provided to Construction Manager.

3.4 **Surveys.** The Owner shall furnish for the site of the Project all necessary surveys describing the physical characteristics, soil reports and subsurface investigations, legal limitations, utility locations, and a legal description.

3.5 **Approvals.** The Owner shall secure and pay for necessary approvals, easements, assessments and charges required for the construction, use or occupancy of permanent structures or for permanent changes in existing facilities.

3.6 **Legal Services.** The Owner shall furnish such legal services as may be necessary for providing the items set forth in Section 3.5, and such auditing services as he may require.

3.7 **Drawings and Specifications.** The Construction Manager will be furnished without charge all copies of Drawings and Specifications reasonably necessary for the execution of the Work.

Property of Cook County Clerk's Office

86053638

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

3.8 **Information Provided.** The services, information, surveys and reports required by the above paragraphs or otherwise to be furnished by other consultants employed by the Owner, shall be furnished with reasonable promptness at the Owner's expense, and the Construction Manager shall be entitled to rely thereon.

3.9 **Non-Conformance.** If the Owner becomes aware of any fault or defect in the Project or non-conformance with the Drawings and Specifications, he shall give prompt written notice thereof to the Construction Manager.

3.10 **Communication with Trade Contractors.** The Owner shall communicate with the Trade Contractors only through the Construction Manager.

Property of Cook County Clerk's Office

ARTICLE 4

TRADE CONTRACTS

4.1 **Award.** All portions of the Project that the Construction Manager does not perform with his own forces shall be performed under Trade Contracts. The Construction Manager shall request and receive proposals from Trade Contractors and Trade Contracts will be awarded after the proposals are reviewed by the Architect, Engineer, Construction Manager and Owner. The

86053638

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

Owner maintains the rights to accept or reject any and all bids and to confirm contract awards.

4.2 **Owner Refusal.** If the Owner refuses to accept a Trade Contractor recommended by the Construction Manager, the Construction Manager shall recommend an acceptable substitute.

4.3 **Parties.** Unless otherwise directed by the Owner, Trade Contracts will be between the Construction Manager and the Trade Contractors. Whether the Trade Contracts are with the Construction Manager or the Owner, the form of the Trade Contracts including the General and Supplementary Conditions shall be satisfactory to the Construction Manager and Owner. The Construction Manager shall require each Trade Contractor, to the extent of the Work to be performed by the Trade Contractor, to be bound to the Construction Manager by the terms of the Contract Documents and to assume toward the Construction Manager all the obligations and responsibilities which the Construction Manager, by this Agreement and the Contract Documents, assumes towards the Owner and the Architect. Where appropriate, the Construction Manager shall require each Trade Contractor to enter into similar agreements with its subcontractors.

4.4 **Construction Manager Responsibility.** The Construction Manager shall be responsible to the Owner for the acts and omissions of his agents and employees, Trade Contractors perform-

Property of Cook County Clerk's Office

86053638

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

ing Work under a contract with the Construction Manager, and such Trade Contractors' agents and employees.

4.5 **Applications for Payment.**

4.5.1. On the dates indicated in the Payment Schedule attached hereto as Exhibit "C" and made a part hereof, the Construction Manager shall deliver to the Owner an Application for Payment in a form to be determined by Owner, and a Certified Statement in a form approved by the Owner, showing in detail all monies paid out or costs incurred by the Construction Manager on account of the Work completed as of the 25th day of the preceding month. The Construction Manager shall, prior to the submission of the second and each subsequent Application for Payment furnish to the Owner an accounting for the disbursement of funds received under the prior Application as well as documentation evidencing the Application's correctness as the Owner, Architect or the General and Supplementary Conditions require. Such Statement shall contain a full and detailed written Statement of the Cost of the Work that was actually incurred in performing the Work during the application period, including any costs incurred as a result of any Change Order. A separate schedule shall be included with the Application for Payment, which shall include the value of materials or equipment not incorporated in the Work but delivered and suitably stored at the Site or at some other location mutually agreed upon; provided, however, that no materials or

Property of Cook County Clerk's Office

86053638

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

equipment may be stored away from the Site without the written consent of Owner. The Application for Payment shall include a statement of materials for which payment is sought itemized according to depreciation category as requested by Owner. The Construction Manager shall require from the Trade Contractors at the time Trade Contractors request Construction Manager for payment, a similar statement of materials for which payment is sought itemized according to depreciation category as requested by Owner.

4.5.2 The Construction Manager agrees that there will be retainage on amounts due the Construction Manager and hence the Trade Contractors pursuant to this Agreement by the Owner. Ten percent (10%) of amounts due the Construction Manager will be retained by the Owner. When, in the opinion of the Owner, a Trade Contractor's work is considered to be fifty percent (50%) complete, the Owner, at its sole option and discretion, may reduce or eliminate the amount retained from the Construction Manager during the remaining fifty percent (50%) of that Trade Contractor's work. The amounts of all retainage shall be shown on the Construction Manager's Statements furnished to Owner, but shall not be included in the amount to be reimbursed to Construction Manager on account of the Cost of Work until such retainage is actually paid. This retainage shall be paid to the Construction Manager for payment to the Trade Contractors upon the Date of Final Completion. Upon mutual agreement by Owner and

Property of Cook County Clerk's Office

86053638

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

Construction Manager, payment in full may be made to those Trade Contractors whose work is fully completed during the early stages of the project, which may include but is not limited to the structural steel, concrete, metal deck, site utility, caisson and earthwork Trade Contractors.

4.5.3. Application for Payment to the extent not inconsistent with this Contract, shall be subject to the provisions of the General and Supplementary Conditions.

4.6. **Payments to the Trade Contractors.**

4.6.1. The Architect and Owner will review the Construction Manager's Applications for Payment and will promptly take appropriate action thereon as provided in the General and Supplementary Conditions. Such amount as he may recommend for payment shall be payable by the Owner not later than the "Payment Date" indicated in Exhibit "C" hereto, provided the Construction Manager's Application for Payment has been received by Owner in its Finance Department by 8:30 a.m. on the date required by Exhibit "C" hereto.

4.6.2. In taking action on the Construction Manager's Applications for Payment, the Architect and Owner shall be entitled to rely on the accuracy and completeness of the information furnished by the Construction Manager and shall not be

Property of Cook County Clerk's Office

86053638

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

deemed to represent that they have made audits of the supporting data, exhaustive or continuous on-site inspections or that they have made any examination to ascertain how or for what purposes the Construction Manager has used the monies previously paid on account of the Contract.

4.6.3. Final Payment, constituting the entire unpaid balance of the Cost of the Work and of the Construction Manager's Fee, shall be paid by the Owner to the Construction Manager after Final Completion of the Work in accordance with the applicable provisions of the General and Supplementary Conditions, provided the Work has been completed, the Contract fully performed, and final payment has been recommended by the Architect.

4.6.4. Payments due, not in dispute, and unpaid 45 days after the payment due date under the Contract Documents shall bear interest. In the event that the Owner in good faith and upon reasonable cause disputes a portion of the Construction Manager's Application for Payment, that portion of the Application for Payment which is not in dispute shall be paid by the Owner. Interest accruing under this paragraph shall accrue at the Prime Rate, as published in the Midwest Regional issue of the Wall Street Journal.

Property of Cook County Clerk's Office

86605363 8

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

4.6.5. **Indemnity**. Upon request Construction Manager shall furnish Owner with evidence reasonably satisfactory to Owner that sums due to Subcontractors and materialmen have been paid and, Construction Manager shall protect, defend, indemnify and hold Owner harmless from and against all claims, damages, losses and expenses, including, but not limited to, reasonable attorneys fees, arising out of the failure of the Construction Manager to pay sums due and payable to Trade Contractors and the materialmen. Construction Manager shall have ten (10) days from the time it receives payment under Exhibit "C" hereto to pay Subcontractors and materialmen.

4.6.6. **Time of Payment to Construction Manager**. Any payment to the Construction Manager by the Owner, whether a part of the Construction Manager's Fee or payment upon a request for payment which Construction Manager is to pay to Trade Contractors, shall, if mailed, be mailed to Gilbane Building Company, 332 South Michigan Avenue, Chicago, Illinois 60604, and payment shall be deemed to have been made at the time of mailing such payment addressed as above with proper postage paid. Construction Manager may, through any of its agents, by hand delivery or messenger delivery pick up from Owner any payment described in this paragraph 4.6.6.

4.6.7. **Time of Payment to Trade Contractor**. In the event that, as allowed by this Agreement or as allowed by law, Owner pays a Trade Contractor, trade subcontractor, or materialman

Property of Cook County Clerk's Office

86053638

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

directly, such payment shall, if mailed, be mailed to the last address known by Owner for such party, and payment shall be deemed to have been made at the time of mailing such payment so addressed with proper postage paid.

4.6.8. **Waiver of Lien.** Construction Manager agrees that he will not file any notice of intention, stop notice, or any other document that may be a step in the procedure of perfecting a lien claim or do or perform any act which may cause title to the Project property, or any part thereof, to be encumbered. Construction Manager does hereby fully and completely waive and release, for himself, his successors and assigns, and for all his subcontractors, and their respective subcontractors, and for every other mechanic, workman, materialman or other person contemplated by Section 21 of Chapter 82 of the Illinois Revised Statutes, any and all rights to claim against the Owner's interest in the property which is the subject matter of this Contract: (i) any lien arising hereunder or in any way connected with the construction which is the subject matter of this Contract, (ii) all mechanic's liens with respect to said construction which may arise under the Statutes of Illinois, and, without limitation of the foregoing, (iii) any claim of or right to lien which might be asserted by reason of doing, making or furnishing, heretofore or at any time hereafter, by Construction Manager, his successors, assigns, materialmen, subcontractors or their respective subcontractors, any labor, services, material,

Property of Cook County Clerk's Office

86053638

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

fixtures, apparatus or machinery with respect to the construction which is the subject matter of this Contract. Construction Manager agrees to execute such stipulations or agreements waiving such liens, in such form suitable for recording as Owner may request. Construction Manager further agrees to include provisions in all its Trade Contracts or subcontracts (or in the General Conditions incorporated therein) for the Project which are consistent with the foregoing provisions of this Paragraph 4.6.8.

Property of Cook County Clerk's Office

ARTICLE 5

SCHEDULE

The services to be provided under this Agreement shall be in accordance with the following schedule:

5.1. Time of Commencement and Substantial Completion.

The Work to be performed under this Contract shall be commenced ten (10) days after receipt by the Construction Manager of a written Notice to Proceed and, subject to authorized adjustments, Substantial Completion shall be achieved not later than the time set forth in the Project Construction Schedule agreed to by the Construction Manager and Owner pursuant to Paragraph 2.1.2.

86053638

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

5.2 **Delay Caused By Owner.** If the Construction Manager is delayed at any time in the progress of the Project by any act or neglect of the Owner, Architect, or the Engineer or by any employee of them, or by any separate contractor employed by the Owner, or by substantial changes ordered in the Project, or unavoidable casualties, or by delay authorized by the Owner, the final completion date shall be extended by Change Order for a reasonable length of time.

5.3 **Delay Beyond the Control of Construction Manager.** In the event that the progress of the Project is delayed due to labor disputes or transportation delays beyond the control of Construction Manager, fire, extreme adverse weather conditions, or other causes beyond the control of Construction Manager, the Construction Manager may make a claim for extension of time in accordance with Section 5.4. Such claim shall be for an extension of time only, and shall not be grounds for an increase in the Construction Manager's Fee, the Guaranteed Maximum Cost, or the Guaranteed Maximum Price.

5.4. **Claims for Extension of Time. With the exception of Paragraph 9.1.3, any claim for extension of time shall be made in writing to the Owner not more than twenty days (20) after the commencement of the delay; otherwise it shall be waived.** This notice requirement is not deemed by the parties hereto to be a

Property of Cook County Clerk's Office

86053638

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

mere formality or a technicality, but rather is essential to the relationship between the parties and shall be strictly adhered to. In the case of a continuing delay only one claim is necessary. The Construction Manager shall provide an estimate of the probable effect of such delay on the progress of the Work.

5.5. **Effect of Weather.** The Construction Manager has given full consideration of the effect of inclement weather normally to be expected during the construction period in adopting the Project Schedule.

5.6. **Delayed Early Completion.** The Construction Manager shall not be entitled to any recovery of damages arising out of an event of delay which prevents early completion of the Work.

5.7. **Recovery of Other Damages.** Except for Section 5.6, this Article 5 does not exclude the recovery of damages for delay by either party under other provisions of the Contract Documents.

Property of Cook County Clerk's Office

ARTICLE 6

GUARANTEED MAXIMUM PRICE

6.1 **Establishment of Guaranteed Maximum Cost.** Prior to soliciting bids from Trade Contractors, the Construction Manager

86053638

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

shall prepare, for review and approval by the Owner, a supplemental and more detailed budget than that previously prepared pursuant to Paragraph 2.1.1 ("Initial Project Budget"), hereinafter called the "Fixed Project Budget". The amount set forth in the Fixed Project Budget as approved by the Owner shall be the "Guaranteed Maximum Cost of the Work". The Guaranteed Maximum Cost of the Work shall be $14,594,490. The Fixed Project Budget will categorize the Work in detail, as shown by the detailed Contract Documents then available, by trades in such a way that as further cost estimates and negotiated subcontracts and bids are developed and/or received by the Owner for the various elements of the Work, they can be compared against the estimates set out in the Fixed Project Budget so that if any significant variation appears immediate corrective action may be taken. The Guaranteed Maximum Cost of the Work shown in the Fixed Project Budget shall not in any event exceed the Initial Project Budget for the Work approved by the Owner, unless approved by the Owner in writing by Change Order pursuant to the provisions of Article 9. If supplemental design and detail information issued by Architect would otherwise increase the approved Guaranteed Maximum Cost of the Work, Architect, in consultation with the Owner and the Construction Manager, shall revise such design and detail in order to comply with the approved limits of the Guaranteed Maximum Cost of the Work. The Fixed Project Budget shall include a line item representing contingency for the use of the Construction Manager prior to

Property of Cook County Clerk's Office

86053638

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

Final Completion. When Final Completion of the Work has been attained, the Construction Manager shall return to the Owner the balance, if any, of monies then remaining in the contingency.

6.2 **Revision of Guaranteed Maximum Cost.** The Guaranteed Maximum Cost of the Work may be revised if a change is made which results in an actual increase or decrease in the Cost of the Work, or in the time of performance. All revisions to the Guaranteed Maximum Cost of the Work shall be made by Change Orders issued in accordance with Article 9 and the General Conditions.

6.3 **Final Review.** Within thirty (30) days after the Date of Final Completion, all authorized revisions and adjustments to the Guaranteed Maximum Cost of the Work shall be reviewed by the Construction Manager and Owner and final cost established.

6.4 **Price Guarantee.** Construction Manager hereby guarantees that the maximum cost of the Project will not exceed the Guaranteed Maximum Price of the Work and may only be increased or decreased in accordance with Article 9. The Guaranteed Maximum Price is comprised of the Guaranteed Maximum Cost plus the Construction Manager's Fee in accordance with Article 7. In no event shall the Guaranteed Maximum Cost and the Construction Manager's Fee exceed the Guaranteed Maximum Price.

Property of Cook County Clerk's Office

86053638

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

6.5 **Authorization.** The Trade Contracts will be with the Construction Manager. The Owner authorizes the Construction Manager to take all steps necessary in the name of the Owner, including litigation, to assure that the Trade Contractors perform their contracts in accordance with their terms.

6.6. **Discounts.** All trade discounts or cash discounts earned through advance or prompt payment, proceeds from insurance, the sale of surplus materials and equipment and the fair market value of any tools, supplies or equipment, and, to the extent permitted by law, fees, commissions and gratuities received by the Construction Manager, or any subsidiary or affiliate, in connection with the project and any other savings off the Guaranteed Maximum Price will belong to the Owner.

Property of Cook County Clerk's Office

ARTICLE 7

CONSTRUCTION MANAGER'S FEE

7.1 **Allocation.** In consideration of the performance of this Agreement, the Owner agrees to pay the Construction Manager as compensation for his services a Construction Manager's Fee in the sum of $634,887. The Construction Manager's Fee is allocated as follows:

86053638

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

Project Management & Administrative Staff	$154,903
Field Staff (including salaries, benefits and taxes)	$218,853
Field Office Expenses	$ 33,900
Management Fee	$227,231
Total	$634,887

7.2 **Schedule.** The Construction Manager's Fee shall be paid according to the dates listed on the schedule set forth in Exhibit "C". On each "Payment Date" listed in Exhibit "C", Owner shall pay to Construction Manager 1/18th of the sum found by subtracting the amount of the Construction Manager's Fee already paid to the Construction Manager as of the date of this Agreement from the Construction Manager's Fee as set forth in Section 7.1 hereof. The Fee shall not be subject to retainage, with the exception of the final Application for Payment of the Fee, which will be subject to retainage pending Final Completion.

7.3 **Holiday on Change Orders.** A change order which does not extend the duration of the construction period shall not result in an increase in the Construction Manager's Fee. In the event that a change order extends the duration of the construction period, an equitable adjustment to the Construction Manager's Fee shall be collectively made by the Owner, the Architect, the Engineer, and the Construction Manager.

7.4 **Fee.** Included in the Construction Manager's Fee are the following:

Property of Cook County Clerk's Office

86053638

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

7.4.1 Salaries or other compensation of the Construction Manager's employees when stationed at the field office, in whatever capacity employed, employees engaged on the road and employees in the main or branch offices performing functions related to the Project. Salaries or other compensation of the Construction Manager's employees engaged out of town and expediting the production or transportation of materials and equipment shall not be included in the Fee, provided that such expediting has been authorized and approved in advance in writing by the Owner.

7.4.2 Expenses incurred for relocation and temporary subsistence expense during relocation in case it is necessary to secure personnel at a distance from the place in which the improvement is located.

7.4.3 General operating expenses of the Construction Manager's principal and branch offices which are attributable to the Project and the Project field office.

7.4.4 Any part of the Construction Manager's capital expenses, including interest on the Construction Manager's capital employed for the Project.

7.4.5 Overhead or general expenses of any kind including

Property of Cook County Clerk's Office

86053638

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

telephone service, telegrams, postage, printing, field office supplies, stationery and similar items, preparation and reproduction of payroll, schedule and cost data processing information.

7.4.6 Costs in excess of the Guaranteed Maximum Price.

7.4.7 Supervisory services of Construction Manager's insurance department.

7.4.8 Cost of Construction Manager's payroll, robbery and general fidelity insurance and any losses sustained by Construction Manager in connection with theft and robbery caused by the defalcation of Construction Manager's salaried employees.

7.4.9 Reasonable transportation, traveling, moving, and hotel expenses of the Construction Manager or of his officers or employees incurred in discharge of duties connected with the Project, except for those duties authorized under Paragraph 7.4.1 above.

7.5 **Additional Services**. At the request of the Owner the Construction Manager will provide the following additional services upon written agreement between the Owner and Construction Manager defining the extent of such additional services and the amount and manner in which the Construction

86053638

Property of Cook County Clerk's Office

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

Manager will be compensated for such additional services, provided, that no service shall be deemed to be an "additional service" unless the service is of such a nature and size that the proper performance of such service shall necessarily extend the Final Completion Date of the Project, or necessarily increase Construction Manager's staffing requirements.

7.5.1 Services related to investigation, appraisals or valuations of existing conditions, facilities or equipment, or verifying the accuracy of existing drawings or other Owner-furnished information.

7.5.2 Services related to Owner-furnished equipment, furniture and furnishings which are not a part of this Agreement.

7.5.3 Services for tenant or rental space not a part of this Agreement.

Property of Cook County Clerk's Office

ARTICLE 8

ITEMS INCLUDED IN GUARANTEED MAXIMUM COST

8.1 **Items Included.** The items included in the Guaranteed Maximum Cost shall be the cost necessarily incurred in the Project and paid by the Construction Manager, or by the Owner if the Owner is directly paying Trade Contractors upon the

88053638

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

Construction Manager's approval and direction. Such items include, but are not limited to, the items set forth below in this Article.

8.1.1 Cost of all materials, and equipment incorporated in the Project, including costs of transportation and storage thereof.

8.1.2 Payments made by the Construction Manager or Owner to Trade Contractors for their Work performed pursuant to contract under this Agreement.

8.1.3 Wages paid for labor in the direct employee of the Construction Manager in the performance of his work under applicable collective bargaining agreements and including such welfare or other benefits, if any, as may be payable with respect thereto, including all employee benefits and taxes for such items as unemployment compensation and social security, pensions, contributions, hospitalization, bonuses, vacations, medical insurance or assessments.

8.1.4 Cost, including transportation and maintenance, of all materials, supplies, equipment, temporary facilities and hand tools not owned by the workmen, which are employed or consumed in the performance of the Work, and cost less salvage value on such items used but not consumed which remain the property of the Con-

Property of Cook County Clerk's Office

86053638

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

struction Manager.

8.1.5 Rental charges of all necessary machinery and equipment, exclusive of hand tools, used at the site of the Project, whether rented from the Construction Manager or other, including installation, repairs replacements, dismantling, removal, costs of lubrication, transportation and delivery costs thereof, at rental charges consistent with those prevailing in the area.

8.1.6 Sales, use, gross receipts or similar taxes related to the Project imposed by any governmental authority, and for which the Construction Manager is liable.

8.1.7 Permit fees, licenses, tests, royalties, damages for infringement of patents and costs of defending suits therefore, and deposits lost. If royalties or losses and damages, including costs of defense, are incurred which arise from a particular design, process, or the product of a particular manufacturer or manufacturers specified by the Owner, Architect or Engineer, and the Construction Manager has no reason to believe there will be infringement of patent rights, such royalties, losses and damages shall be paid by the Owner and not considered as within the Guaranteed Maximum Price.

8.1.8 Losses, expenses or damages to the extent not

Property of Cook County Clerk's Office

86053638

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

compensated by insurance or otherwise except for those losses, expenses or damages arising from or due to the negligence of the Construction Manager, Trade Contractors, Trade Subcontractors, materialmen or suppliers, anyone directly or indirectly employed by any of them or for whose acts any of them may be liable (all of whom shall be collectively referred to herein as "Contractors") arising from a breach of any of the Contractors' duties under any of their agreements concerning the Project, arising from any Contractors' misrepresentation or failure to follow any state, city or federal ordinance, statute or rule, or arising from any Contractors' intentional tort, defalcation or dishonest act.

8.1.9 The cost of corrective work.

8.1.10 Cost of removal of all debris.

8.1.11 Cost incurred due to an emergency affecting the safety of persons and property and all costs expended to comply with all provisions of the Occupational Safety and Health Act including administration costs.

8.1.12 Legal costs reasonably and properly resulting from prosecution of the Project for the Owner.

8.1.13 If any liens or encumbrances upon the Project shall

Property of Cook County Clerk's Office

86053638

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

occur notwithstanding the no lien provision of this Contract and the Trade Contracts, Owner shall be given notice therof by the Construction Manager. If any liens or encumbrances placed upon said property by a third party shall delay the progress of construction or prevent the timely advances and payment of the funds due to be provided herein by Owner, Construction Manager shall bond said claim in order to remove it from the public records and the premium charge for said bond shall be included in the Guaranteed Maximum Cost.

8.1.14 All costs necessitated by rules, regulations, building codes, taxes, labor rates and governmental actions.

8.1.15 All costs directly incurred in the performance of the Project and not included in the Construction Manager's Fee as set forth in Article 7.

8.1.16 Costs of bonds and insurance as required by Exhibit "D" hereto.

Property of Cook County Clerk's Office

ARTICLE 9

CHANGES IN THE PROJECT

9.1 **Change Orders; Adjustments.** The Owner without invalidating this Agreement may order changes in the Project,

86053638

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

within the general scope of this Agreement, other than minor changes in the Project as contemplated by Section 9.2, consisting of additions, deletions or other revisions. All such changes in the Project other than a minor change shall be authorized by Change Order, with the Guaranteed Maximum Price, the Construction Manager's Fee, and the Final Completion Date being adjusted accordingly. The determination as to whether a change, addition or deletion of work shall be considered a minor change, a change requiring a change order, or a change outside of the general scope of this Agreement, shall be collectively made by the Owner, the Architect, the Engineer, and the Construction Manager. A change in the Project costing less than $5,000 shall not be determined to be anything other than a minor change in the Project, or require adjustment of the Guaranteed Maximum Cost, the Construction Manager's Fee or the Final Completion Date. Notwithstanding the foregoing, a change in scope shall not be considered a minor change regardless of the dollar amount.

Any increase in the Construction Manager's cost resulting from minor changes shall be charged against the contingency of the Construction Manager or borne directly by the Construction Manager. In the event that the cumulative effect of a series or group of minor changes is to exceed the contingency of the Construction Manager, an equitable adjustment to the Guaranteed Maximum Cost shall be collectively made by the Owner, the Architect, the Engineer, and the Construction Manager.

Property of Cook County Clerk's Office

86053638

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

9.1.1 A Change Order is a written order to the Construction Manager signed by the Owner or his authorized agent issued after the execution of this Agreement, authorizing a Change in the Project or the method or manner of performance and/or an adjustment in the Guaranteed Maximum Price, the Construction Manager's Fee, or the Final Completion Date. Each adjustment in the guaranteed Maximum Price resulting from a Change Order shall clearly separate the amount attributable to the cost of the Project and the Construction Manager's Fee.

9.1.2 There is hereby incorporated into this Agreement by this reference the following sections of the General Conditions: Sections 12.1.3 through 12.1.23, and Section 12.3. Said provisions shall apply to this Agreement where applicable. The obligations of the Trade Contractor to the Construction Manager shall be obligations of the Construction Manager to the Owner. The word "amendment" shall be meant to read "change order".

9.1.3 Should concealed conditions encountered in the performance of the Work below the ground surface or in an existing structure differ materially from those ordinarily encountered and generally recognized as inherent in the Work of the character provided for in this Agreement, the Guaranteed Maximum Cost, the

Property of Cook County Clerk's Office

86053638

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

Construction Manager's Fee, and Final Completion Date shall be equitably adjusted by change order upon claim by either party made within 30 days after first observance of the conditions.

9.2 **Minor Changes in the Project**

9.2.1 The Owner, the Architect and the Engineer will have authority to order minor changes in the Project not involving an adjustment in the Guaranteed Maximum Price, the Construction Manager's Fee or an extension of the Final Completion Date and not inconsistent with the intent of the Drawings and Specifications. Such changes shall be effected by written order and shall be binding on the Owner and the Construction Manager.

9.3 **Emergencies**

9.3.1 In any emergency affecting the safety of persons or property, the Construction Manager shall act, at his discretion, to prevent threatened damage, injury or loss. Any increase in the Guaranteed Maximum Price or extension of time claimed by the Construction Manager on account of emergency work shall be determined as provided in this Article.

Property of Cook County Clerk's Office

86053638

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

ARTICLE 10

PAYMENTS TO THE CONSTRUCTION MANAGER

10.1 **Requests for Payment.** The Construction Manager shall submit monthly to the Owner a sworn statement, showing in detail all moneys paid out, costs accumulated or costs incurred on account of the Cost of the Project during the previous month and the amount of the Construction Manager's Fee due as provided in Article 7. The Construction Manager shall provide to Owner with each request for payment of the Construction Manager's Fee, a detailed report of man hours expended on the Project.

10.2 **Payment to Trade Contractors.** Construction Manager shall promptly in accordance with Section 4.5 pay all the amounts due Trade Contractors or other persons with whom he has a contract upon receipt of any payment from the Owner, the application for which includes amounts due such Trade Contractor or other persons. Before issuance of final payment, the Construction Manager shall submit satisfactory evidence that all payrolls, materials bills and other indebtedness connected with the Project have been paid or otherwise satisfied.

Property of Cook County Clerk's Office

86053638

UNOFFICIAL COPY

Property of Cook County Clerk's Office